IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of Case

Date of decision : 19.06.2006

Criminal Appeal No. 1026 of 2001
(Old No. 1044 of 1982)

Hashim @ Buccha
S/o Balloo Shekh
R/o Village Vanowala
Police Station Barapur
District Bijnor. ……Appellant

Versus

State of U.P. ……Respondent

Mr. Diwaker Chamoli, Amicus Curiae for the appellant.
Mr. D.K. Sharma, Government Advocate for the State.

A.F.R. (Approved for Reporting)
Not approved for reporting

Initials of Judges

Date: 19.06.2006

Note : Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1026 of 2001
(Old No. 1044 of 1982)

Hashim @ Buccha
S/o Balloo Shekh
R/o Village Vanowala
Police Station Barapur
District Bijnor. ……Appellant

Versus

State of U.P. ……Respondent

Mr. Diwaker Chamoli, Amicus Curiae for the appellant.
Mr. D.K. Sharma, Government Advocate for the State.

Coram: Hon'ble Rajeev Gupta, C.J,
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 01.04.1982, passed in Sessions Trial No. 10 of 1981 by the then learned Sessions Judge, Pauri Garhwal, whereby appellant Hashim alias Buccha is convicted under Section 396 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.) and sentenced to imprisonment for life.

2. The prosecution story, in brief, is that Hashim alias Buccha S/o Ballo Shekh R/o Vanowala, alongwith four

other persons on 06.08.1979, at about 8:00 A.M., committed dacoity near forest post, South Paapidanda. And while doing so, committed murder of two persons, namely Bharat Busan and Rishipal Singh, both wild life Guards. According to the prosecution, the Forest Department has a range office at Laldang, which is about 27 Kms. East of Kotdwar. There are staff quarters at Laldang of the employees of said department. The range office is connected by a pakka road. But in the rainy season due to the breaches on the road, the traffic is diverted through the road via village Sigaddi. In that route, there is a dilapidated check post at Papidanda. The route is narrow near said 'CHOWKI' (Post). There is a curve on said route for turning towards Kotdwar. P.W. 3 Rajendra Singh, a Peon was attached with the range office, Laldang. He used to carry dak to the main office in Kotdwar. Other employees of the 'CHOWKI' also used to go to Kotdwar every month to draw their salary. On 6th August 1979, a little before 8:00 A.M., P.W. 3 Rajendra Singh proceeded from the 'CHOWKI' with dak for Kotdwar. Other two employees also from the Forest Department, namely Bharat Bhusan and Rishi Pal Singh (both deceased) were also accompanying him on said date, as they had to draw their salary at Kotdwar. Ahead of these three, at some distance, P.W. 6 Lalmani, a milkman carrying 'MA WA' (a milk product), was also going towards Kotdwar. One Mohan, resident of village Chamriya was accompanying him. Bharat Bhushan, a wild lifeguard, was carrying with him his gun, officially issued to him. All the above people were on their bicycles. When they reached near Sigaddi water

channel, P.W. 3 Rajendra Singh, Bharat Bhushan and Rishipal (both deceased), got down from their bicycles and put out their shoes and started cleaning the same. Meanwhile, P.W. 6 Lalmani and Mohan had crossed the water channel and they got further ahead of the above three by thirty steps. They took turn in the curve of the route and were not visible to the forest officials. Soon thereafter, suddenly five miscreants came on the way of the forest officials and one of the miscreants grappled Bharat Bhushan who was in possession of the gun to snatch the same. There was thick forest on both sides of the road. A scuffle followed and within minutes, the miscreant grappling with Bharat Bhushan, got succeeded in snatching away the gun. Meanwhile, Rajendra Singh and Rishipal Singh also got down from their bicycles to help Bharat Bhushan. However, the other miscreants who were wielding lathies, prevented the two to reach Bharat Bhushan. Thereafter, miscreants fired at Bharat Bhushan and dropped him dead on the path. Thereafter, one miscreant fired at Rishipal Singh and he also died on the spot. P.W. 3 Rajendra Singh, got frightened and pleaded for mercy and got a chance to run away towards jungle. Through jungle, this witness reached soon after 8:00 A.M. in the village Jaidevpur, Sigaddi and narrated the story to P.W. 5 Vishan Singh Adhikari, village Pradhan. Vishan Singh gave his own cycle to Rajendra Singh (P.W. 3), facilitating him to reach Kotdwar at the earliest. Meanwhile, P.W. 5, Vishan Singh along with other villagers, rushed towards the place of occurrence and kept vigil till the Investigating Officer reached there. At Kotdwar, P.W. 3 Rajendra Singh contacted P.W. 2

Buddhi Singh and got prepared First Information Report (Ext. A-4). The said report was submitted by one Shri Rawat, wild life warden at the Police Station Kotdwar. P.W. 3 Rajendra Singh and P.W. 2 Buddhi Singh were also present when the report was lodged. At the police station, check report (Ext. A-16) on the basis of First Information Report was prepared by Head Constable Than Singh.

3. P.W. 13 Chandan Singh, Station Officer, started investigation of the crime. After the First Information Report was lodged, he went with P.W. 1 Head Constable Pitamber Dutt in a jeep towards the place of incident. There he found that dead bodies of Bharat Bhushan and Rishipal were lying on the kachha road. The bicycles of the forest employees were also lying there. In a bag, hung in the bicycle, some papers including six T.A. bills were found there. The police prepared recovery memo of the articles found, and after taking into possession the dead bodies, prepared the inquest reports (Ext A-5 and A-6). The Investigating Officer, Chandan Singh also took the blood stained soil and sample soil and prepared its memo. He further prepared site plan (Ext. A-14). After about 1 ½ month, on 21.09.1979, P.W. 4 KC. Sharma, Station Officer of Police Station- Barapur, Bijnore while investigating some crime there, arrested accused Hashim @ Buccha. During interrogation there, he admitted having committed afore mentioned dacoity. Immediately, a wireless message was sent through Police Station Najibabad, Bijnore to Police Station Kotdwar. And after interrogation when the accused was taken into

custody, he was kept ‘BAPARDA’ (face covered). A test identification parade was held on 29.10.1979, in the presence of P.W. 10 Sarvjeet Singh, the then Sub Divisional magistrate, Nagina. On said date, appellant Hashim @ Buccha, was correctly identified by P.W. 3 Rajendra Singh. After completion of the investigation, the Investigating Officer submitted charge sheet (Ext. A-26), before the Magistrate. Learned Magistrate after giving necessary copies under Section 207 of Cr.P.C. to the accused persons, committed the case to the Court of Sessions.

4. Learned Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 396 I.P.C. against accused Hashim @ Buccha (present appellant), whoi pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 head Constable Pitamber Dutt, before whom the Investigating Officer, from the place of occurrence, collected pair of shoes of Rishipal (deceased) Ext. -1, white shirt of said deceased (Ext.2), Rs. 20 (Ext. -3) from the pocket of said shirt, a ball pen (Ext. 4), blood stained paper (Ext.-5), another paper (Ext.-6), clothes (Ext. 7-Ext. 14), six T.A. bills, pair of shoes (Ext-15) of deceased Bharat Bhushan, pants (Ext.20), one terricot shirt (Ext. 21), one white underwear (Ext. 22), memo of the articles (Ext. A-1) and that of blood stained soil (Ext. A-23), pellets (Ext. 24 Ext. 25) and its memo

Ext. A-2, P.W. 2 Buddhi Singh, Assistant wild life warden, who reached at the spot with police soon after the occurrence of the incident. P.W. 3 Rajendra singh, informant and sole eye-witness of the incident, who narrated the prosecution story and proved the First Information Report (Ext. A-4), P.W.4 K.C. Sharma the then Station Officer of Barapur, District Bijnore to whom during interrogation, accused disclosed that he committed dacoity in Kotdwar also, sent the wireless message to Police Station Kotdwar, P.W. 5 Vishan Singh Adhikari (village Pradhan of Jaidevpur, Sigaddi), P.W. 6 Lalmani, milkman who was looted separately just before the incident. P.W. 7 Jagdish Singh, the then Head Constable of Police Station Barapur, P.W. 8 Constable Ramphool Singh, who stated that the accused after the arrest was kept 'BAPARDA' (face covered), P.W. 9 Constable Jagdish Chander, who has also stated that the accused/appellant was kept 'BAPARDA' (face covered), P.W. 10 Sarvijit Singh, the then Sub Divisional Magistrate, Nagina, before whom test identification parade was conducted and who prepared memo (Ext. A - 13) of the test identification, P.W. 11 Constable Brahm Prasad, who stated that the face of the accused was kept covered during his custody, P.W. 12 Dr. A.B. Mamgain, who conducted autopsy on the dead bodies of the deceased Bharat Bhushan and Rishipal, P.W. 13 Sub-Inspector Chandan Singh Bisht, the Investigating Officer and P.W. 14 Constable Rishipal, who has also stated that the accused/ appellant was kept 'BAPARDA' (face covered) when sent to and brought from the jail. All the oral and documentary evidence was put to the

accused/appellant under Section 313 of Cr.P.C. to which the accused replied that he has falsely been implicated by the police due to the enmity and was shown to the witnesses. After hearing the prosecution and the accused, learned trial court found accused/appellant Hashim @ Buccha guilty of the charge of offence punishable under Section 396 I.P.C. and accordingly convicted him, and after hearing on sentence, sentenced him to imprisonment for life. Aggrieved by said judgment and order, this appeal was preferred before the Allahabad High Court in the year 1982 and received by this Court by transfer under Section 35 of U.P. Reorganization Act, 2000, for its disposal.

5. We heard learned counsel for the parties and perused the entire record.

6. Before further discussions, it is necessary to mention here the ante mortem injuries observed on 07.08.1979 by P.W. 12 Dr. A.B. Mamgain on post mortem examination of the dead bodies of Bharat Bhushan and that of Rishipal. The ante mortem injuries found on the dead body of Bharat Bhushan, recorded in Ext. A-14 by the Medical Officer, are as under:-

1. **Abrasion on Dorsum of right writs 5cm X 4 cm. (sign of bleeding underneath).**
2. **Abrasion in front of right fore arm lower part 7cm X 4cm. (sign of bleeding underneath).**

3. Abrasion on back of right elbow outer side 7cm X 4cm. (sign of bleeding underneath).
4. Abrasion in front and lower part of right arm 5cm X cm. (sign of bleeding underneath).
5. Abrasion 10cm X 8cm on right side abdomen upper part (sign of bleeding).
6. Abrasion 7cm X 3cm in front and under right thigh (sign of bleeding underneath).
7. Gun shot wound.

   Wound of Entry:- 5cm X 4cm (trans) horizontal on left side chest front 3cm outward from midline 3cm inwards from left nipple with charring around the wound in an area of 1cm margins inverted. Probe directed inwards and towards the midline. Pellet present underneath the skin with massive congestion on the pectoral muscle. After opening the chest cage the wound entry was passing through left inverted span. Cork rings and pellets present in the lung.

Cause of death of Bharat Bhushan, according to the Medical Officer (P.W. 12- Dr. A.B. Mamgain) was shock and haemorrhage as a result of ante mortem injury No. 7.

7. The same Medical Officer (P.W. 12) conducted autopsy on the dead body of Rishipal. The following ante mortem injuries on the person of the deceased, were recorded on the same date i.e. 07.08.1979 in the post mortem examination report (Ext.15):-

1. **Multiple gunshot injuries all measuring 0.25 cm in diameter except one wound 0.5 X 0.5 cm in size over the front of left chest wall in an area of 12 cm X 10 cm extending from midline to mid calancular line upper limit 7 cms below clavicle with blackening of the whole area.**
2. **Multiple gunshot injuries 14 cm X 7 cm on dorsum wrist and lower part of dorsum left forearm with blackening. On cutting the skin there is sign of bleeding with laceration of muscles and few pellets are present.**
3. **Gunshot (multiple) wound in an area 2 cm X 2 Cm on front and inner side of right wrist.**

According to the Medical Officer, the cause of death was shock and haemorrhage, as a result of ante mortem injury No.1.

8. P.W. 3 Rajendra Singh, informant and sole eye-witness has stated before the trial court that in August,

1979, he was posted as peon in the forest range office Laldang with a duty to take post from Laldang to Kotdwar. Deceased Bharat Bhushan and Rishipal Singh were known to him and both of them were living in range colony of Laldang. In the rainy season, the road between Laldang and Kotdwar used to get close and people used to go by bicycles to Kotdwar via Sigaddi through kachha road. On 6th August, 1979, at about 8:00 A.M. when he was taking post to Kotdwar, deceased Bharat Bhushan and Rishipal were also with him. They were also on the bicycles. Two persons Mohan Singh and P.W. 6 Lalmani were going ahead of them on their bicycles. Bharat Bhushan was in possession of a gun. When they reached near Papidanda, five persons suddenly came from behind through a jungle and got hold of Bharat Bhushan, who shouted for help. On this, Rishipal (another deceased) and P.W. 3 Rajendra Singh got down from their bicycles but three of the five miscreants drew the lathies to beat the witness (Rajendra Singh). Meanwhile, the fifth miscreant, who was having a gun, fired at Bharat Bhushan. Whereafter, the person who got hold of Bharat Bhushan, snatched the gun from him. P.W. 3 Rajendra Singh, thereafter says that the miscreant having a gun, fired at Rishipal. This witness (P.W. 3) further states that some how he got a chance to run away from the scene and reached to village Pradhan of Sigaddi. From there, he went to Wild Life Warden. Thereafter, he got lodged First Information Report (Ext. A-4). P.W. 3 Rajendra Singh further states that when accused Hashim @ Buccha was arrested by police, he was called upon to identify the witness in jail and he

identified him in the test identification parade. In the court also, this witness identified Hashim @ Buccha.

9. The First Information Report (Ext. A-4), read with check report (Ext. A-16), shows that the Report was lodged on the very day i.e. 06.08.1979, at about 9:35 A.M. The distance of the police station from the place of occurrence is 22 Kms. As such, the First Information Report is a prompt one. P.W. 1 Head Constable Pitamber Dutt is one of the police official, who reached at the spot soon after the First Information Report was lodged, along with the Investigating Officer. P.W. 1 further states that on reaching at the place of occurrence, he saw dead bodies of Bharat Bhushan and Rishipal Singh lying there. He further states that before him the Investigating Officer, from the place of occurrence, collected pair of shoes of Rishipal (deceased) Ext. -1, white shirt of said deceased (Ext.- 2), Rs. 20 (Ext. -3) from the pocket of the shirt, a ball pen (Ext.-4), their clothes (Ext. 7- Ext. 14), six T.A. bills, pair of shoes (Ext-15) of deceased Bharat Bhushan, pants (Ext.16) of said deceased and Rs. 915 (Ext. 17) from his pocket, two cartridges (Ext. 18), one blank cartridge, pair of slippers (Ext. 19) of one of the miscreant, one rod (Ext. 20), one terricot shirt (Ext. 21), one white underwear (Ext. 22), preparation of memo of the articles (Ext. A-1) and that of blood stained soil (Ext. A-23), pellets (Ext. 24 and Ext. 25) and its memo Ext. A-2. P.W. 2 Buddhi Singh, Assistant Wild Life Warden, states that P.W. 3 Rajendra Singh lodged the First Information Report. He further

states that P.W. 3 Rajendra Singh, one Shri Rawat and he himself reached at the spot with the police soon after the report of the incident lodged. On reaching at the place of incident, he saw the dead bodies of Rishipal Singh and Bharat Bhushan lying on the kachha road. P.W. 6 Lalmaini, a milkman, who was going ahead of P.W. 3 Rajendra Singh and the deceased persons, has also corroborated that before the aforesaid incident, he too was looted of his belongings. This witness has further stated that he too got lodged the First Information Report (Ext. A-7) of the previous incident. P.W. 6 Lalmani has also stated that as soon as the miscreants saw that three other persons (Rajendra Singh and the deceased persons), were coming, they left Lalmani and his companion Mohan Singh.

10. P.W.4 K.C. Sharma the then Station Officer of Barapur, District Bijnore, states that during interrogation, accused/appellant disclosed to him that he committed dacoity in Kotdwar also. He further states that on disclosure of the commission of dacoity by the accused/appellant, he sent the wireless message to Police Station Kotdwar. P.W. 7 the then Head Constable of Police Station, Barapur, has corroborated the statement of P.W. 4 K.C. Sharma and stated that after the arrest, the accused was kept with the face covered. This witness has further proved copy of the extracts of General Diary (Ext. A-9 to Ext. A-12) made at the police station Barapur. P.W. 8 Constable Ramphool Singh and P.W. 9 Constable Jagdish Chander, have also corroborated the

statement of the above two witnesses that the accused was kept ‘BAPARDA’ (face covered).

11. P.W. 10 Sarvjeet Singh, the then Sub-Divisional Magistrate, has stated on oath that the test identification parade was conducted under his supervision and P.W. 3 Rajendra Singh correctly identified accused Hashim @ Buccha. This witness further states that the accused was mixed up in the parade with similar other under trial prisoners and stickers were pasted on their faces to cover the mark of identification. This witness has proved test identification report (Ext. A-13).

12. P.W. 13 Chandan Singh Bisht is the Investigating Officer, who has stated that after the First Information Report, he reached at the spot and took into possession the dead bodies of the deceased persons and recovered articles from the spot (as described earlier) and prepared inquest report of dead bodies, and recovery memo of the articles. He further states that he prepared the site plan (Ext. A-24) and also proved the documents, police forms No. 13 (Ext. A-18 and Ext. A-20), sketches of the dead bodies (Ext. A-19 and Ext. A-21), letter to the Chief Medical Officer, requesting for post mortem examination (Ext. A-22) and sample seal (Ext. A-23).

13. In view of the above discussion of evidence adduced by the prosecution witnesses, supported by the documentary evidence mentioned above, we are in agreement with the trial court that the prosecution has been successful in proving that accused/appellant

Hashim @ Buccha was one of the five members, who committed dacoit on 06.08.1979. and while doing so, Bharat Bhushan and Rishipal Singh were murdered and gun of Bharat Bhushan was robbed.

14. On behalf of the appellant, it is argued that it is not safe to rely on the evidence of P.W. 3 Rajendra Singh, informant, as there is no other eye-witness of the incident to corroborate his evidence. Had there been other eye-witnesses of the incident who were not produced by the prosecution fro examination, we could have accepted the argument of learned counsel for the appellant. But in the present case, there was a sole eye-witness, as such, merely for there was on that there are no other eye-witnesses, his evidence cannot be discarded. Moreover, from the evidence on record, it is clear that P.W. 3 Rajendra Singh had no enmity with accused/ appellant Hashim @ Buccha.

15. Shri Diwakar Chamoli, Amicus curiae, contended on behalf of the appellant that P.W. 3 Rajendra Singh, has not described the mark of identification on the basis of which he recognized the miscreant at the spot, as such, his evidence should not be believed. We feel that such a description by the witness is necessary only when the person identified is either too short or too long or too dark or too fair or there is any other major feature worth mentioning. It is not the case here. It is also contended on behalf of the appellant that P.W. 6 Lalmani has stated that there were 6-7 miscreants while P.W. 3 has stated that the miscreants were five in number. We cannot

disbelieve the prosecution story on said contradiction for the reason that we are conscious of the fact that the incident, which has occurred with the forest officials, is a subsequent one. From the evidence on record, it is clear that due to the curve on the road, P.W. 3 Rajendra Singh had no opportunity to see the incident, which happened with Lalmani (P.W. 6) and Mohan Singh. Since, there is no evidence on record that the persons who committed dacoity in the earlier incident were the same who committed subsequent dacoity, the aforesaid contradiction does not help the appellant. It is pertinent to mention here that P.W. 6 Lalmani has not identified the accused/appellant in the test identification parade, which is clear from the test identification memo (Ext. A-13).

16. Learned Amicus Curiae on behalf of the accused/appellant submitted that in the sketch report and the inquest report, abrasions mentioned on the dead body of Bharat Bhushan, are shown to be three in number while abrasions mentioned in the post mortem report are six in number. This Court cannot ignore the fact that after the dead bodies were taken into possession, they were taken from the place of occurrence to District Head Quarter Pauri for post mortem examination. And in the hills, while taking the dead body in a vehicle, it is possible that some abrasions might have been caused on the dead bodies. Assuming for a moment, such abrasions cannot be termed to be ante mortem injuries, since this discrepancy in injuries is not sufficient to disbelieve the gun shot injury, received by the deceased Bharat

Bhushan, who was fired at after he was grappled and over powered by one of the miscreants. Such minor abrasions, if left out at the time of preparation of inquest report or sketch of the dead bodies, cannot be said to be sufficient to create any reasonable doubt in the prosecution story.

17. For the reasons, as discussed above, we do not see any error of fact or that of law in the impugned judgment and order, whereby the accused/appellant is convicted under Section 396 I.P.C. and sentenced to imprisonment for life. Accordingly, the appeal is liable to be dismissed. The same is dismissed. Accused/appellant Hashim @ Buccha is on bail. His bail is cancelled. He shall be taken into custody by the court concerned to serve out the sentence awarded against him.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt: 19.06.2006
Sweta